

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 04-2 ERIE

DANIEL RAY HINES

RESENTENCING

Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Courtroom C, U.S. Courthouse, Erie,  
Pennsylvania, on Tuesday, August 2, 2005.

APPEARANCES:

MARSHALL J. PICCININI, Assistant United States  
Attorney, appearing on behalf of the Government.

THOMAS W. PATTON, Assistant Federal Public

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the proceedings began at 1:30 p.m., on  
4 Tuesday, August 2, 2005, in Courtroom C.)

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6 THE COURT: This is the time that has been set for  
7 resentencing in the case of United States versus Daniel Ray  
8 Hines at Criminal No. 04-2 Erie. It has been sent back from  
9 the circuit in light of Booker. Is there anything new, Mr.

10 Patton?

11 MR. PATTON: Your Honor, we would continue to object  
12 to the two-level enhancement for the firearm. But we have no  
13 new evidence to present beyond what was presented at the

14 original sentencing.

15 THE COURT: All right. That was the only objection,  
16 wasn't it, at the original sentencing?

17 MR. PATTON: Yes.

18 THE COURT: For the reasons previously set forth on  
19 the record on November 22, 2004, relative to the propriety of  
20 the enhancement for possession of a firearm, I continue to  
21 believe, I am of the opinion, as I was then, that the two point  
22 enhancement was appropriate. I simply incorporate by reference  
23 as is fully set forth, my reasons that were articulated on  
24 November 22nd.

25 That having been said, the total offense level

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1 applicable is 31; with a criminal history category of III.  
2 Statutory provision as to custody not less than 10 years to  
3 life imprisonment. Guidelines 135 to 168. Probation is  
4 ineligible under both the statutory and guidelines. Supervised  
5 release pursuant to the statutory provision at least five  
6 years. Guideline provisions five. Statutory provision as to a  
7 fine \$4 million. The guidelines \$15,000 to \$4 million.

8 Restitution is inapplicable under both. And a \$100 special  
9 assessment applies both with respect to the statutory and the  
10 guideline provisions.

11 Mr. Patton, is there anything you want to say or is  
12 there anything that Mr. Hines would like to say?

13 MR. PATTON: Yes, your Honor, I would like to make  
14 an argument and Mr. Hines would like to make a statement.

15 THE COURT: Okay.

16 MR. PATTON: To start off the discussion, I'd like  
17 to review Mr. Hines' criminal history and what the punishment  
18 he has had in the past versus what he's facing today.

19 THE COURT: All right.

20 MR. PATTON: Mr. Hines basically has four  
21 convictions that he is receiving criminal history points for.  
22 The first conviction is for the reckless operation of a motor  
23 vehicle, driving under a suspension and furnishing false  
24 information. He received a sentence of 30 days custody, with  
25 27 days suspended. And he served a grand total of three days

1 in custody for that offense.

2 THE COURT: When was that?

3 MR. PATTON: That sentence was imposed in April of  
4 1996. After there was some failures to pay some fines and so  
5 he was brought back into court several times, but never had any  
6 new sentence of imprisonment imposed upon him.

7 THE COURT: All right.

8 MR. PATTON: And he received a criminal history  
9 point for that offense. He then received, was convicted of  
10 driving without a driver's license. And was sentenced to 180  
11 days imprisonment, with 150 days suspended. He failed to  
12 report. He was arrested, started serving the 30 days, ended up  
13 serving 42 days before he was released upon paying his costs  
14 and fines in full. So that was 42 days of imprisonment  
15 involved there. He received a criminal history point for  
16 possession of drug paraphernalia, where he was fined \$250.  
17 Where he had a pipe, rolling papers and a hemostat, which I'm  
18 assuming is a fancy word for a roach clip to smoke a joint.

19 THE COURT: What did they call it?

20 MR. PATTON: Hemostat. That was a straight fine.  
21 Then he receives a point for falsification, resisting arrest,  
22 where he was stopped for a speeding violation, gave a false

23 name, but then turned over his wallet, so the police then had  
24 his correct identity. He then ran from the police, who then  
25 just sent a summons to his home since they had his home

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1 address. And Mr. Hines appeared in court, pled guilty to this  
2 offense, and was given credit for 17 days served. He was  
3 sentenced to 180 days, with 163 days suspended, he received  
4 credit for 17 days served.

5 Those are the convictions for which he received  
6 criminal history points. So if you add those up, he was  
7 incarcerated for a total of 62 days. He also received two  
8 criminal history points because he was on probation at the time  
9 of the federal offense.

10 THE COURT: All right.

11 MR. PATTON: That's what gets him to criminal  
12 history category III. And the reason I start with this is that  
13 you now have to decide whether the punishment is sufficient,  
14 but not greater than necessary to comply with the sentencing  
15 purposes that are listed in 18 United States Code, Section  
16 3553(a)(2). And that language is important and I think it

17 sometimes doesn't get the notice it deserves, that is the

18 directive to you to impose a sentence that is sufficient, but

19 not greater than necessary to achieve these sentencing

20 purposes.

21 We know that Mr. Hines is looking at a 10 year

22 mandatory minimum sentence in this case. So that sets the

23 absolute floor. And so then the question becomes if 120 months

24 is the floor, the guidelines call for 135 to 168 and you

25 imposed a sentence of 140 months originally, treating the

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1 guidelines as binding. But what is there in the 20 extra

2 months of incarceration, or to put it another way, how is 120

3 months not sufficient to achieve the goals of reflecting the

4 seriousness of the offense and to promote respect for the law,

5 provide just punishment for the offense. How is 120 months not

6 sufficient, and somehow this extra 20 months are needed to

7 convince people that this offense is serious.

8 THE COURT: Excuse me for interrupting you, is he

9 looking at any state charges?

10 MR. PATTON: He is, your Honor. I was present at

11 Ms. Munnings resentencing earlier today. When Mr. Misko gave  
12 kind of a rundown of the sentences that Ms. Munnings is looking  
13 at. Mr. Hines is looking at virtually the same situation. The  
14 charges that are pending in Crawford County are all based on  
15 arrests that were listed in the offense conduct section of the  
16 presentence report, and were also listed in the affidavit in  
17 support of the search warrant in the federal case. These are  
18 all instances where there is basically a traffic stop, every  
19 time Mr. Hines and Ms. Munnings were stopped, they had some  
20 type of drug paraphernalia in their car. As Mr. Misko  
21 explained to you this morning, the plea agreement that has been  
22 reached in Crawford County is that Mr. Hines pled to one felony  
23 drug count, a possession with intent to distribute, I  
24 believe -- it's either two or three misdemeanor counts of  
25 possession and -- one count for possessing a prohibitive

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1 offensive weapon, a switchblade.

2 THE COURT: Just so I'm clear, the state charge, the  
3 charges to which he has pled, they grow out of the same  
4 operative set of facts that form the subject matter of this

5 indictment?

6 MR. PATTON: They do in the sense that yes, it was  
7 all information that was used to obtain the federal search  
8 warrant. It's information that was listed in the presentence  
9 report as offense conduct. Now, the controlled substances that  
10 are at issue in those offenses were not included in calculating  
11 Mr. Hines' base offense level here, I want to make that clear.  
12 But I do believe it's clear from the search warrant application  
13 and the presentence report that this is all part of the  
14 methamphetamine manufacturing that led to Mr. Hines' conviction  
15 here. And the plea in Crawford County is that there is no  
16 agreement as to what sentence the judge is going to impose,  
17 other than the sentences on the state counts will be concurrent  
18 with one another, but then the total sentence is going to be  
19 consecutive to the federal sentence.

20 THE COURT: All right.

21 MR. PATTON: In this case adding 20 months on to a  
22 120 mandatory minimum, I would submit, is not going to  
23 materially advance the goals of sentencing set forth in the  
24 statute. If someone is not going to be deterred from  
25 manufacturing meth by a sentence of 120 months, it is

1 unreasonable to believe that a sentence of 140 months will  
2 somehow put this perspective meth manufacturer over the edge in  
3 saying, well, for 120 months I'd do it, but 140 months is too  
4 much. I just don't think that is realistic.

5       To protect the public from further crimes of the  
6 defendant. If your Honor will recall, I'm sure you probably  
7 read the transcript from the previous sentencing, Mr. Hines  
8 gave a very heartfelt and sobering statement on his behalf by  
9 saying that unfortunately for him it took getting incarcerated  
10 and facing this magnitude of sentence to get his mind clear so  
11 that he can look back and truly understand how bad his decision  
12 making was. When I was talking with Mr. Hines earlier today  
13 upstairs in the Marshal's lockup, just the sense from him of  
14 disbelief, that how could I have been doing this stuff. Now,  
15 having not being under the influence of methamphetamine, being  
16 able to think clearly and looking back, just having a hard time  
17 fathoming that you could get so deeply involved with it that  
18 your decision making is that bad.

19       And with that I would submit, and Mr. Hines wants to  
20 make a statement to your Honor again today, a 120 month

21 sentence is sufficient to deter, to protect the public from Mr.  
22 Hines. Especially when you throw in the fact that he got  
23 consecutive time in Crawford County, that's what he's looking  
24 at. And that once that Crawford County time is finished and he  
25 is physically released, his five years of federal supervised

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1 release will start to run. Those five years of supervised  
2 release do not run while he is incarcerated on the Crawford  
3 County sentence. They do not begin to run until he is  
4 physically released from the Crawford County sentence.

5 THE COURT: In other words, he can't be on  
6 supervised release federally while he's in state jail?

7 MR. PATTON: Exactly. So the court will have the  
8 assurance that Mr. Hines will be monitored for five years after  
9 he comes out of his combined sentences here in federal court  
10 and Crawford County. And that can help assure the court of the  
11 safety of the community.

12 Now, in our case the kinds of sentences available is  
13 pretty much -- doesn't mean anything because there has to be a  
14 sentence of imprisonment. So that is kind of a non-factor

15 here.

16 Now, you get to the Sentencing Guidelines. That you  
17 have to consider the Sentencing Guidelines. And I would submit  
18 that in the wake of Booker, if the only change that is made in

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19 sentencing is the insertion of the word advisory before the  
20 word guidelines, but then the process continues to roll along  
21 the same as it always did before and always sentence within the  
22 guidelines, that, if not violating the letter of Booker, it

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23 certainly violates the spirit of Booker. And it is in practice

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24 or another way to put it, as applied, it violates the Booker

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25 principles. If a sentence within the guidelines are always

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1 imposed, simply calling them advisory, that really doesn't fix  
2 the problem.

3 And that leads into the next factor, which is the  
4 need to avoid unwanted sentencing disparities. Of course the  
5 big argument behind the guidelines is that all similarly  
6 situated people receive similar sentences. But in reality the

7 guidelines don't achieve that. What is by pure happenstance  
8 the facts that are found at a particular time, say a federal  
9 search warrant gets served, can have a huge impact on the  
10 sentences that two different defendants are looking at. If  
11 both defendants have firearms, have used firearms in  
12 distributing drugs, but one of them happens to not have a gun  
13 around at the time the feds come in, so they don't find it,  
14 that person can walk away with a much more lower guideline  
15 range than the person who happens to have the firearm present  
16 when the feds or the state law enforcement show up. So even  
17 though the defendants have been engaging in the same real  
18 conduct, just by the particular facts as they stand at the time  
19 the investigation proceeds, they can end up looking at very  
20 different sentences. And another way that comes is through  
21 cooperation. And it's complete luck, it's complete luck as to  
22 whether or not a defendant has information that the federal  
23 government is going to be able to use to prosecute someone. If  
24 they're lucky enough to have that, they can end up getting a  
25 sentence that is half as long as the next person who

1 distributed the same amount of drugs, who just doesn't happen  
2 to be lucky enough to have information about someone else. In  
3 this case Mr. Hines cooperated. We met with DEA, gave them an  
4 extensive proffer, gave them extensive information about the  
5 gentleman who taught Mr. Hines how to manufacture meth. The  
6 gentleman involved with the meth that Mr. Hines was  
7 manufacturing was going to, but unfortunately for Mr. Hines,  
8 the government doesn't have enough information to proceed with  
9 a charge against that individual.

10 THE COURT: So he didn't get a 5K?

11 MR. PATTON: Correct. So while the guidelines on  
12 its surface have this general appeal that following them will  
13 not result in unwarranted disparities, that really in practice  
14 that isn't the way it works out.

15 And, of course, there is no need for restitution in  
16 this case as your Honor has found that there is no restitution  
17 owing.

18 I would simply, I would respectfully ask the court  
19 to articulate why, if it feels a sentence above 120 months is  
20 necessary, why 120 months isn't sufficient to meet those goals,  
21 but that somehow an extra 15 or 20 months does meet those

22 goals.

23 THE COURT: I do take your point. And it's a point  
24 you made before very well with other sentences as well. Then  
25 what is the purpose of the enhancement. The enhancement stands

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1 on its own two feet. Obviously, the Sentencing Commission in  
2 its wisdom, if you will, decided that on top of what minimum  
3 sentence a judge may be required to pass out, if someone  
4 possesses a firearm in connection with drug activity, then that  
5 merits some additional add on. What about that?

6 MR. PATTON: I can't argue that if someone is using  
7 or has a weapon present while distributing drugs, it is  
8 actually using that weapon to further the drug distribution,  
9 that that is a factor that can be considered and is properly  
10 considered. There's a couple qualifications to that. The  
11 guidelines say if a gun is even around, give the enhancement,  
12 without any finding or any evidence that the gun was used in  
13 any way, shape or form to further the drug activity. There is  
14 a statute, 18 United States Code, Section 924(c), that  
15 criminalizes using of a firearm in connection with or in

16 furtherance of a drug offense. That requires proof that the  
17 firearm was actually possessed or carried in furtherance of a  
18 drug transaction. The guideline enhancement does not require  
19 that link. In this case there was no evidence presented that  
20 these firearms were ever used to threaten someone or is in any  
21 way to materially advance the conspiracy to manufacture  
22 methamphetamine. And so the guideline enhancement lacks the  
23 link, the logical link between calling for a higher sentence in  
24 a drug case when a gun is present, that is true if the gun is  
25 somehow used to make that drug offense more serious. But

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1 without that extra finding, then the basis for increasing the  
2 sentence loses its force.

3       The other argument, your Honor, is that, and I know  
4 I've argued this to you before, but that the Sentencing  
5 Guidelines in their treatment of drug offenses is out of line  
6 with all other federal sentences and state sentences. The  
7 American Bar Association has studied the issue at the urging of  
8 Justice Kennedy. And have written a very lengthy report  
9 explaining how federal drug sentences are just completely out

10 of line with state drug sentences, state violent crime

11 sentences, with other federal sentences. And so that the

12 guidelines -- getting a base offense level itself is

13 overstated. And I understand methamphetamine is an addictive

14 drug. I understand at this point in time in northwestern

15 Pennsylvania methamphetamine is -- it's not so much newer

16 anymore, but it's still a fairly recent phenomenon. Back in

17 the late '80s, early '90s, when crack cocaine was hitting, the

18 press behind it, the reaction to it was this was the end of the

19 world. This drug is different than any other drug, it's going

20 to cause complete destruction. And crack cocaine is a terrible

21 thing, but it's not the end of the world as we know it. The

22 sad truth of it is after it's been around long enough, for the

23 markets to establish themselves, people can get set up, it's

24 like all other drugs, it becomes a part of the community and

25 part of the overall economy. And nobody for the past couple

1 thousands of years has ever been able to persuade individuals

2 who are leaning towards using drugs to stop. At least not

3 through the criminal justice process.

4 And so I would just strongly urge your Honor to just  
5 think about taking somebody who's only served a total of 62  
6 days and saying okay, this is a very serious offense, there  
7 needs to be serious punishment. And everyone understands that.  
8 But going from having served 62 days to 3,650 days is a massive  
9 increase that does send the message to the public that this is  
10 an incredibly serious offense, and to Mr. Hines that it's a  
11 serious offense and you have to be punished accordingly. But  
12 the extra 15 or 20 months doesn't have to be there. It doesn't  
13 have to be there to satisfy the factors that you are to  
14 consider when imposing a sentence, and when you are told that  
15 the sentence is supposed to be sufficient, but not greater than  
16 necessary to achieve those goals.

17 THE COURT: All right, thank you, Mr. Patton. Mr.  
18 Hines, do you have something you want to say?

19 THE DEFENDANT: Yes. Your Honor, when I was doing  
20 drugs, I never realized how bad it was for me or anybody else  
21 around me. Now I see that what it has done to me and my  
22 family. My kids don't even have no dad no more. I can't even  
23 explain how bad I feel about it. But I'm just sorry for what  
24 I've done. Pretty near everyday I'd like to go back to working  
25 and have a regular life again.

1 THE COURT: Refresh my recollection, how many kids  
2 do you have and what are their ages?

3 THE DEFENDANT: Four. One is six and the others are  
4 13, 14 and 16.

5 THE COURT: All right. Is there anything else you  
6 want to tell me?

7 THE DEFENDANT: I'm just sorry, your Honor.

8 THE COURT: All right.

9 MR. PATTON: Your Honor, one other thing. Even if  
10 Mr. Hines is admitted into the federal drug treatment program  
11 because of the finding that there were firearms involved in  
12 this offense, he will not receive a reduction.

13 THE COURT: He won't get any credit?

14 MR. PATTON: Correct, they may let him into the  
15 program, but he will not receive any reduction in his sentence  
16 because this will be classified as a violent offense. So,  
17 therefore, he's ineligible receiving a reduction in sentence.

18 THE COURT: All right, thank you, Mr. Hines.

19 THE DEFENDANT: Thank you.

20 THE COURT: All right, Mr. Piccinini.

21 MR. PICCININI: Thank you, your Honor. I won't  
22 belabor this point. I don't want to step away from the claims  
23 with regard to the post Booker sentencing realm that we're in  
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24 today. And counsel argued, as he's argued in other cases, on  
25 behalf of Mr. Hines, that if after Booker all you were to do  
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1 was to impose a guideline sentence, then you are violating at  
2 least the Booker principle, the spirit of the Booker case. But  
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3 all of that argument assumes that the Sentencing Guidelines  
4 themselves are this group of rules that were not put together  
5 by a sound, reasoned commission, who really thought out, not  
6 just on behalf of the government, but on behalf of the entire  
7 criminal justice system and the court, who really put a lot of  
8 thought into sentencing structure. And if you take away the  
9 assumption that they're completely unreasonable and that they  
10 should have never existed, then what you're dealing with in a  
11 post Booker world is determining whether, after looking at the  
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12 guidelines, you also have, as an independent judge exercising  
13 his discretion, find what the guidelines have found to be  
14 reasonable. In this case there is a good example of that.  
15 Because what we're talking about here today is the difference  
16 between a 10-year mandatory minimum sentence that would apply  
17 to any methamphetamine manufacturer, like Mr. Hines and Ms.  
18 Munnings, who would walk into this courtroom. Whether they  
19 have a firearm or not, if they walk into this courtroom,  
20 they're looking at a mandatory minimum sentence. The  
21 guidelines provide guidance to courts, reasonable guidance as  
22 to why you should increase a particular sentence because of the  
23 presence of firearms. And in the commentary of the guidelines  
24 it says specifically, "the enhancement for weapon possession  
25 reflects an increase danger of violence when the drug

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1 traffickers possess weapons." This is in writing. This is the  
2 explanation the Sentencing Commission gives for increasing  
3 sentences beyond the 120, to in this case a range of 135 or  
4 140.

5 So the question for yourself, your Honor, in a post

6 Booker world, would you agree with the statement as an  
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7 independent judge exercising his discretion within the  
8 sentencing realm from here on out that the enhancement for  
9 weapon possession by you would reflect an increased danger of  
10 violence when drug traffickers possess weapons. Because if you  
11 don't recognize it in this particular case, then the mandatory  
12 minimum sits by itself and the difference between Mr. Hines and  
13 Ms. Munnings with guns and the methamphetamine manufacturer or  
14 drug dealer without guns, there is no difference. So the  
15 question for you is, is there a reason for an enhanced sentence  
16 when firearms are present. I believe that's reasonable under  
17 the guidelines. I believe it would be reasonable for the court  
18 to exercise its discretion.

19 With regard to unwarranted disparities. You  
20 sentenced Ms. Munnings this morning. The government would have  
21 no problem with you sentencing Mr. Hines to the same level. I  
22 don't perceive that counsel has argued that there is a  
23 difference in the relative roles. And the sentence would be  
24 appropriate. A sentence beyond the mandatory minimum was  
25 appropriate a year and a half ago, it is appropriate today.

1 And just a note that I made at the first sentence.

2 Mr. Hines comes in here, unlike a lot of defendants, seems to  
3 sincerely believe the things that he says. I'd love to see him  
4 write a letter to the Crawford County Meadville Tribune and to  
5 the Oil City Derrick, to those people who are completely  
6 inundated with methamphetamine because those people, who are  
7 about to go to jail for 135 months, could hear from somebody  
8 who's experiencing this right now, so we don't have to come  
9 back to the courtroom. I would just make the comment that  
10 although he does seem sincere, it doesn't change the  
11 seriousness of what he did.

12 THE COURT: All right, I'm going to take a few  
13 minutes, then come out and sentence.

14 (Recess from 1:58 p.m.; until 2:02 p.m.)

15 THE COURT: In the wake of United\_States\_v.\_Booker,

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16 the Sentencing Guidelines, as we have discussed more fully at  
17 this sentencing today, are of course advisory. However, I'm  
18 still obligated to consult those guidelines in determining the  
19 appropriate sentence.

20 In addition to the Sentencing Guidelines under

21 Booker, I must also consider other factors that are set forth

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22 in 3553(a), which require courts to impose a sentence

23 "sufficient, but not greater than necessary" to comply with the

24 purposes set forth in paragraph two. Section 3553(a)(2),

25 states that such purposes are:

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1 (A) to reflect the seriousness of the offense, to

2 promote respect for the law, and to provide just punishment for

3 the offense;

4 (B) to afford adequate deterrence to criminal

5 conduct;

6 (C) to protect the public from further crimes of

7 the defendant; and

8 (D) to provide the defendant with needed

9 educational or vocational training, medical care, etc.

10 The commentary goes on to direct that the sentencing

11 courts consider; (1) the nature and circumstances of the

12 offense and the history and characteristics of the defendant;

13 the kinds of sentences available; the need to avoid unwanted

14 sentencing disparities among defendants with similar records  
15 who have been found guilty of similar conduct; and the need to  
16 provide restitution to any victims of the offense. Of course,  
17 not all of those individual considerations are always relevant.  
18 However, in fashioning this sentence, I have carefully  
19 considered the advisory guideline range, as well as the other  
20 factors which I have just articulated.

21       As I have said before, it remains my opinion that  
22 methamphetamine distribution is a very serious crime. It's  
23 obviously very detrimental to the health, both physical and  
24 mental, of people who are involved, but is also extremely --  
25 it's also very dangerous to those who happen to reside in the

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1 vicinity of where the drug is being made, given its combustible  
2 nature. In a crime like this, particularly given the spread of  
3 methamphetamine in this area, deterrence is, in my view, a very  
4 important aspect, as is protection of the public. And so  
5 having carefully considered all of those factors, I fashion the  
6 following sentence.

7       Would you please stand, Mr. Hines. Let me also say

8 that as a distinct component of this sentence, I think it is  
9 entirely appropriate for the court to consider, as a distinct  
10 element of this sentence, the fact that I did find the reckless  
11 conduct to support the enhancement for possession of a firearm.  
12 And that it would be inappropriate to fashion a sentence to  
13 disregard that.

14 Consequently, pursuant to the Sentencing Reform Act  
15 of 1984, it is the judgment of the court that the defendant,  
16 Daniel Ray Hines, is hereby committed to the custody of the  
17 Bureau of Prisons to be imprisoned for a term of 135 months.

18 Upon release from imprisonment, the defendant shall  
19 be placed on supervised release for a term of five years.

20 Within 72 hours of release from the custody of the  
21 Bureau of Prisons, the defendant shall report in person to the  
22 probation office in the district to which this defendant is  
23 released.

24 While on supervised release, the defendant shall not  
25 commit another federal, state or local crime; shall comply with

1 the standard conditions of supervision recommended by the

2 Sentencing Commission and adopted by this court; and shall  
3 comply with the following additional conditions.

4 One. The defendant shall not illegally possess a  
5 controlled substance.

6 Two. The defendant shall not possess a firearm or  
7 destructive device.

8 Three. The defendant shall participate in a program  
9 of testing and, if necessary, treatment for substance abuse as  
10 directed by the probation officer, until such time as the  
11 defendant is released from the program by the probation  
12 officer.

13 Further, the defendant shall be required to  
14 contribute to the costs of services for any such treatment in  
15 an amount determined by the probation officer but not to exceed  
16 the actual cost.

17 The defendant shall submit to one drug urinalysis  
18 within 15 days after being placed on supervision and at least  
19 two periodic tests thereafter.

20 It is further ordered that the defendant shall pay  
21 to the United States a special assessment of \$100, which shall  
22 be paid to the United States District Court Clerk forthwith.

23 I find the defendant does not have the ability to

24 pay a fine, consequently, I will waive a fine in this case.

25 Mr. Hines, do you understand you do have the right

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1 to appeal this sentence, but if you choose to do so, you must

2 do so within 10 days; do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Is there anything further?

5 MR. PATTON: No, your Honor.

6 MR. PICCININI: No, your Honor.

7 THE COURT: Then we're done.

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9 (Whereupon, at 2:08 p.m., the Resentencing

10 proceedings were concluded.)

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1 CERTIFICATE

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4 I, Ronald J. Bench, certify that the foregoing is a

5 correct transcript from the record of proceedings in the

6 above-entitled matter.

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11 Ronald J. Bench

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